

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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ROBERT PALATIN,

1:18-cv-7142

Plaintiff,

COMPLAINT

-against-

BANK OF AMERICA, N.A.,

Defendant.
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The plaintiff ROBERT PALATIN, by his attorneys Mallon Consumer Law Group PLLC, as and for his complaint against the defendant BANK OF AMERICA, NATIONAL ASSOCIATION alleges as follows, upon information and belief:

PRELIMINARY STATEMENT

1. This is an action for actual and statutory and statutory attorney's fees brought pursuant to the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* ("TCPA"). Defendant repeatedly called and texted plaintiff's cellular telephone after Plaintiff expressly revoked consent to be contacted on his cell phone.

JURISDICTION AND VENUE

2. The jurisdiction of this Court is conferred by 47 U.S.C. § 227(b)(3). Venue is properly laid pursuant to 28 U.S.C. § 1391(b).

PARTIES

3. The plaintiff is an individual natural person and the "called party."

4. Bank of America, N.A. (“Bank of America”) is a national banking association based in North Carolina.

FACTUAL BACKGROUND

5. Plaintiff opened a credit card account with Defendant Bank of America several years ago.

6. After receiving numerous harassing calls to Plaintiff’s cell phone, he wrote to Defendant on March 23, 2018 and expressly revoked any consent he had provided for Defendant to contact him on his cell phone.

7. Defendant continued to call and text Plaintiff on his cell phone after March 23, 2018, despite receipt of his express revocation of consent to contact him on his cell phone.

8. None of these calls or texts were made for an emergency purpose.

9. Defendant placed these calls to Plaintiff using an automatic telephone dialing system (“ATDS”).

10. The ATDS used by Defendant has the capacity to store or produce telephone numbers to make calls using a random or sequential number generator.

11. As a direct and proximate result of Defendant’s actions, Plaintiff is entitled to recover statutory damages from Defendant.

FIRST CAUSE OF ACTION **VIOLATION OF THE TCPA**

12. The plaintiff repeats and realleges each and every allegation set forth above as if reasserted and realleged herein.

13. “Willfully” and “knowingly” under the TCPA means that Defendant acted voluntarily, and under its own free will, regardless of whether Defendant knew that it was acting in violation of the statute. Sengenberger v. Credit Control Servs., 2010 U.S. Dist. LEXIS 43874, *16-17

(N.D. Ill. May 5, 2010); see also, e.g., Bridgeview Health Care Ctr. Ltd. v. Clark, No. 09-C-5601, 2013 U.S. Dist. LEXIS 37310 (N.D. Ill. Mar. 19, 2013); Stewart v. Regent Asset Mgmt. Solutions, No. 10-CV-2552, 2011 U.S. Dist. LEXIS 50046 (N.D. Ga. May 4, 2011); Davis v. Diversified Consultants Inc., 36 F. Supp. 3d 217, 226 (D. Mass. 2014).

14. Defendant called plaintiff's cellular telephone using an ATDS on multiple occasions without plaintiff's prior express consent.

15. The foregoing acts of Defendant constitute numerous multiple negligent and/or willful and/or knowing violations of the TCPA.

16. As a result of Defendant's negligent and/or willful and and/or knowing violations of the TCPA, Defendant is thus liable to the plaintiff for statutory damages of \$500 to \$1,500 for each call, pursuant to 47 U.S.C. § 227(b)(3).

WHEREFORE, the plaintiff respectfully requests the following relief:

17. \$500 or \$1,500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) as a result of Defendant's negligent and/or willful and/or knowing violations of 47 U.S.C. § 227(b)(1)

18. (ii) injunctive relief prohibiting such conduct in the future pursuant to 47 U.S.C. § 227(b)(3)(A)

19. (iii) any other relief the Court may deem just and proper.

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**THE PLAINTIFF DEMANDS A JURY TRIAL ON ALL CAUSES OF ACTION
ASSERTED HEREIN.**

Dated: December 14, 2018

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Kevin M.', is written over a horizontal line.

Kevin Mallon
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